IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13219 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVIND JIVABHAI SALAT

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 13219 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MS PUNANI, AGP, for Respondent No. 1-3

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 06/12/2004

ORAL JUDGEMENT

Heard Mr Pandya for Ms K.U. Mishra for the petitioner and learned AGP Ms Punani for the other side.

2. By invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner - detenu has challenged the legality and validity of the order of detention No.PCB/DTN/PASA/09/2004 dated 28th February, 2004 passed against him by the Police Commissioner, Rajkot City, branding the petitioner as a dangerous person within the meaning of Section 2(c) of the conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act).

3. The petitioner has challenged the order of detention on various grounds mentioned in the memo of the petition and contended that he has been branded as a person dangerous to the maintenance of public order. The detaining authority, the Police Commissioner, Rajkot City, for passing the order under challenge has considered grounds mentioned in communication dated 28th February, 2004 conveyed to the petitioner (Annexure-B) and especially the fact of involvement of the present petitioner in two different offences punishable under Sections 379, 356 read with Section 114 of the Indian Penal Code. The first offence that was registered was registered with Bhaktinagar Police Station on 8th January, 2004 and the second offence was registered with Bhaktinagar Police Station on 17th January, 2004. In the first offence the petitioner came to be arrested on 2nd February, 2004. It seems that when the petitioner was in custody and interrogation of the first offence registered by Bhaktinagar Police Station, he was formally arrested for the second offence committed on 17th January, 2004. The police was successful in recovering the muddamal articles for both the offences as is revealed from the grounds of detention considered by the detaining authority and communicated to the detenu. The detaining authority has also considered two statements placed by the sponsoring authority recorded on 23rd February, 2004. Both these statements have been verified by the detaining authority on 24th February, 2004. It is argued by Mr Pandya that if the alleged incidents narrated by both these witnesses and the registration of two different criminal offences are taken together then, the alleged wrong can be said to be an activity affecting the maintenance of law and order and therefore the order of detention should be quashed. One more argument advanced by Mr Pandya is that the detenu had agitated the grievance against the order of detention before the competent authority by making a representation which was decided at a belated stage i.e. after a lapse of practically 7 days. However, the authority was supposed

to consider the representation expeditiously. It is relevant to note that the representation dated 28th September, 2004 was received by the office of Secretary of Home Affairs of the State of Gujarat on 30th September, 2004 and was processed immediately. Indisputably, 2nd October, 2004 being the birth anniversary of Father of Nation, Mahatmaji, it was a National holiday and then 3rd October, 2004 was a Sunday. Even then, the decision to reject the representation was taken on 3rd October, 204 and communication was sent to the detenu on 4th October, 2004. The grievance of the petitioner before the Court is that the communication of 4th October, 2004 was ultimately received by the jail authorities of Sabarmati Jail, Ahmedabad, on 11th October, 2004 and he was communicated with the decision taken by the State Government on that very day i.e. on 11.10.2004. The original communication received by the detenu, which is tendered today by Mr Pandya with the permission of the Court, is taken on record. There is some force in the say of Mr Pandya that expeditious disposal of the representation includes the expeditious communication of the decision and in support of this argument, Mr Pandya has placed reliance on the observations of the Apex Court in the case of Harish Pahwa v/s State of Uttar Pradesh reported in AIR 1981 SC 1126.

4 Mr Pandya has also placed reliance on the decision of this Court in Special Civil Application No.12634 of 2000 decided on 19th June, 2001 (Coram: H.K. Rathod, J.) wherein the learned Single Judge has reproduced one paragraph of the decision of this Court in Special Civil Application No.9664 of 1999, decided on 16th March, 2000 (Coram: A.L. Dave, J.). The time consumed in forwarding the communication is found relevant in view of the settled legal position and unexplained delay of about more than six days would go to the root of the validity of the detention. Such detention cannot sustain. Without commenting upon the first point pressed into service by Mr Pandya the Court is inclined to allow this petition on the ground of delay in communicating the decision of the Government that has remained unexplained. The petition is, therefore, allowed.

5 For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 28th February, 2004 passed by Commissioner of Police, Rajkot, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made

absolute. Direct Service is permitted.

[C. K.BUCH, J]

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